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Pro and Con

Cut Access to Government Data?

YES—Government files shouldn't "become the world's largest free reference service"



**Interview With
Antonin Scalia**

Professor of Law,
University of Chicago

NO—People should have "the right to know what government is doing"



**Interview With
Representative
Glenn English**
Democrat,
Of Oklahoma

Scalia, why do you feel that the Freedom of Information Act should be cut back?

A The Freedom of Information Act—or, more specifically, the 1974 amendments to the act—came out of an era of exuberant, single-minded pursuit of individual objectives. We are now discovering that such tunnel-vision zeal—whether directed toward the environment or automobile safety or freedom of information—is indulged at excessive cost to other important objectives. It is time to remedy the excesses in the 1974 amendments, while not gutting the law or turning away from the desirable goal of freedom of information.

Q What are some of the changes needed?

A For one thing, persons or corporations requesting information under the Freedom of Information Act should pay a larger proportion of the taxpayers' cost of supplying it. I know of one horrible example in which a single request cost the government over \$400,000. To say that the government's files should not be kept secret from its citizens is not to say that the government should become the world's largest free library reference service.

Another change needed is in the area of law enforcement and national security. Currently, material in investigative files can be withheld only if one of a number of quite narrow conditions are met. Law-enforcement officers and national-security officials have found those conditions inadequate. Many requests are made by felons with the explicit intention of finding out the names of informants.

My major objection, though, has to do with information about private institutions. When the act was passed, it was seen as a means of revealing what the government was doing, for the benefit of the public at large. But in operation, it has been used largely as a means of revealing what private companies are doing, for the benefit of their adversaries and competitors.

Q Is that so bad? It might promote healthy competition in business—

A So might a "sunshine act" requiring the records and activities of all private institutions to be public. It is, again, a question of competing values. In this country, we have a tradition of respecting the autonomy and privacy of non-governmental organizations—whether they're churches or corporations or labor unions or universities. We have specified, law by law, certain institutions and certain activities that must be public. All the rest have, of course, been

Q Representative English, why do you oppose changing the Freedom of Information Act, as favored by the Reagan administration?

A Because I think the changes would jeopardize the atmosphere of open government fostered by the act, which gives the public wide access to unclassified government documents. The law embodies the very essence of our type of government: Openness, public involvement, the right to know what your government is doing.

The Reagan administration wants to make wholesale changes that would make it much more difficult, if not impossible, for the public to discover the errors of government. This seems to be every administration's approach, whether it is Democratic or Republican, liberal or conservative. We find that those who are out of power are the most enthusiastic supporters of the act. It is only when they get into power that they begin to voice their concerns about it. And the bureaucracy itself, of course, doesn't want to have to bother with the requirements of the law. It is an inconvenience.

Q Has the statute really made for a more open government?

A In numerous instances, the press and members of the public received information solely because this law was on the books. In fact, many departments and agencies simply provide information without waiting for someone to invoke the act formally.

Q Isn't the law being used in some ways that Congress never intended, such as by prisoners seeking clues to the identity of those who informed on them?

A That is a charge made by the Federal Bureau of Investigation, but the Subcommittee on Government Information and Individual Rights, which I chair, has not seen any evidence of this. Certainly we don't want information released that might endanger an informant's life or might, in some way, thwart law and order.

But we have demanded evidence of abuse before seriously considering changes in the act. We've gotten a lot of generalities from the Justice Department but no specifics.

Q Law-enforcement agencies say the intelligence flow has dropped greatly because informants are refusing to come forward for fear of exposure under the law—

A First of all, a lot of intelligence and investigative material is exempt from disclosure under the act. Information that would identify informants is specifically protected under the act.